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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
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7 _____)
8 CG TECHNOLOGY DEVELOPMENT, LLC)
9 et al.,)
10 Plaintiffs,)
11 vs.)
12 888 HOLDINGS PLC,)
13 Defendant.)
14 _____)

2:16-cv-00856-RCJ-VCF

ORDER

13 These three consolidated cases arise out of the alleged infringement of several patents
14 relating to online sports gambling. The Court has transferred four other previously consolidated
15 cases to various other districts for improper venue under 28 U.S.C. § 1406 and *TC Heartland*
16 *LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017).

17 Because discovery remains open, Plaintiffs may amend their initial infringement
18 contentions without prior leave, but only with good cause. L.R. 16.1-12. Defendants may
19 challenge such an amendment via a motion to strike. *Bravo Co. USA, Inc. v. Badger Ordnance*
20 *LLC*, No. 2:14-cv-387, 2016 WL 6518436, at *2 (D. Nev. Nov. 2, 2016) (Foley, Mag. J.). Non-
21 exhaustive examples of good cause supporting amendment of infringement contentions include
22 an adverse claim construction or recent discovery of material prior art or nonpublic information
23 about the accused product despite earlier diligent searches. L.R. 16.1-12.
24

1 Plaintiffs filed their initial infringement contentions on January 5, 2017. Defendants filed
2 their initial non-infringement, invalidity, and unenforceability contentions on March 21 and
3 April 4, 2017. Plaintiffs later served Defendants with amended infringement contentions, adding
4 claims 26, 30, and 33 of the '818 Patent; claims 1, 6, 7, 8, and 9 of the '058 Patent; and
5 additional theories of infringement. Defendants asked the Magistrate Judge to strike the
6 amended infringement contentions because Plaintiffs had not shown good cause. The new
7 contentions were based mainly on the same evidence (and completely on evidence previously
8 available through normal diligence). Defendants also argued that they would be prejudiced if the
9 amendments were permitted to stand, because they had instituted inter-partes review ("IPR")
10 proceedings at the Patent Trial and Appeal Board ("PTAB") against the claims identified in
11 Plaintiffs' initial infringement contentions, and Plaintiffs' addition of claims via amendment to
12 the infringement contentions after the statutory bar had passed for Defendants to attack the new
13 claims via IPR at the PTAB was an improper ambush tactic to avoid the possibility of having to
14 defend those claims at the PTAB (which is more defendant-friendly than the district courts
15 because the standard used for claim construction at the PTAB is more likely to result in claims
16 being struck down as anticipated or obvious). Plaintiffs argued in opposition that they simply
17 wanted to correct Defendants' alleged misapprehension of the meanings of various claim terms.

18 The Magistrate Judge struck the amended infringement contentions. Plaintiffs have
19 asked the Court to overrule the Magistrate Judge under Rule 72(a). The Court denies the motion.
20 The Magistrate Judge made no error of law in ruling that the proper method to resolve
21 disagreements in claim interpretation is through *Markman* proceedings. Moreover, in addition to
22 requiring good cause to add infringement contentions without adding patent claims, a party may
23 not add new patent claims to a case, i.e., new causes of action for infringement, except via
24 amendment. *See, e.g., Sage Electrochromics, Inc. v. View, Inc.*, No. 12-cv-6441, 2014 WL

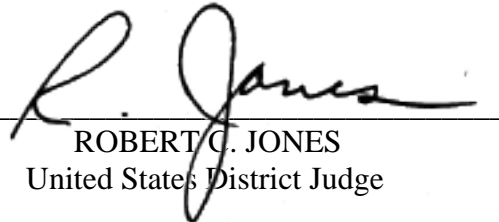
1 1379282, at *2 (N.D. Cal. Apr. 8, 2014) (noting that the only question was whether an
2 infringement plaintiff seeking to add new claims of infringement must satisfy *only* Rule 15 or
3 *also* the local patent rules); *see also Straight Path IP Grp. v. Apple Inc.*, No. C16-3582, 2017
4 WL 3967864, at *5 (N.D. Cal. Sept. 9, 2017) (limiting leave to amend infringement contentions
5 to the scope of existing claims in the complaint). In other words, when a plaintiff seeks to
6 introduce new patent claims into an infringement action, amendment of the relevant pleading
7 under the standards of Rule 15 is required, regardless of whether good cause is also required
8 under any local patent rules. Plaintiffs here used their as-of-right amendment under Rule 15 long
9 before serving the amended infringement contentions, and they did not move to amend the
10 Complaint to add the patent claims at issue. For this additional reason, the Magistrate Judge was
11 correct to strike the amended infringement contentions.

12 CONCLUSION

13 IT IS HEREBY ORDERED that the Motion to Reconsider (ECF No. 110) is DENIED.

14 IT IS SO ORDERED.

15 Dated this 20th day of November, 2017.

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18 ROBERT C. JONES
United States District Judge